

At a Special Term of the Supreme
Court held in and for the County of Erie,
State of New York, located at Part 32,
Buffalo, NY, on the ~~day of, 2020.~~

12TH DAY OF NOV, 2020

PRESENT: HON. DIANE Y. DEVLIN
Justice Presiding

STATE OF NEW YORK
SUPREME COURT : : COUNTY OF ERIE
JUDITH J. SCHMELZINGER, as Administrator of the
Estate of ROBERT CLOSS

Petitioner

DECISION and ORDER

-VS-

Index No.: 811681/2020

CITY OF BUFFALO and
BUFFALO POLICE DEPARTMENT

Respondents

Upon the foregoing papers, it is ordered that this Petition is DENIED.

The following papers were read and considered on this Petition for leave to serve late
notice of claim.

Petition-Affirmation-Exhibits, Document Numbers 1-7
Answering Affirmation-Exhibits, Document Number 12
Replying Affirmation-Exhibits, Document Numbers 13-17

According to the Petition, the decedent stole a vehicle owned by Respondents and he
struck other vehicles and other property during the course of operating it. Decedent's
administratrix claims that the police caused him injury after incident and/or during his arrest.

The incident occurred on March 6th, 2019. Decedent died on March 30, 2019. Generally

Notice of Claim against a municipality must occur within 90 days of the incident. In the case of a wrongful death, the 90 days runs from the appointment of a representative of decedent's estate.

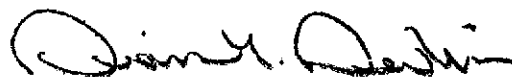
GML § 50-e(1)(a).

The Petition does not set forth when Petitioner was appointed administratrix, so the court is unable to analyze the time frame from appointment to filing of the instant Petition. However, a letter dated January 28, 2020 advised Respondents that it would be filing a motion for late notice. However, the instant Petition was not filed until October 02, 2020.

The record indicates that decedent struck several vehicles and other property before the alleged physical interaction occurred with Respondent police. The court finds that Respondents would be prejudiced by late filing since it may not have been able to investigate properly and adequately for a determination as to whether the alleged injuries were the result of the multiple motor vehicle accidents that occurred when he was operating the stolen vehicle or the police interaction thereafter.

The court DENIES the Petition.

DATED: DEC 03 2020



DIANE Y. DEVLIN, J.S.C.

SUPREME COURT
PART 32

orders/motion decision and order